In the Supreme Court of the United States.

OCTOBER TERM, 1903.

RIBAS Y HIJO, APPELLANT,
v.
THE UNITED STATES. } No. 151.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was an action at law instituted in the district court of the United States for Porto Rico, by Ribas y Hijo, "a company incorporated and organized under the laws of the Kingdom of Spain, having an office and doing business in the city of Vigo, Spain, and the city of Ponce, Porto Rico" (R. I.), seeking to recover $10,000 for the use of the seagoing merchant vessel *Paz*, seized by the Army and Navy in the port of Ponce, July 28, 1898, and used by the military authorities until the following April, when the War Department ordered its return to the owner if all claim for use or damage

for detention were waived. This conditional return was refused by the captain, who claimed to be part owner, and who, with the crew, left the vessel. Later in the month of April the consignees were notified that it was at their disposal. They were requested to put some one in charge, but declined; thereupon the vessel was abandoned. In August following it was wrecked by hurricane. (R., 5, 6.)

The vessel was never in naval custody and no steps were taken to condemn it as a prize. When seized it was a Spanish vessel, floated the Spanish flag, and its captain, crew, and owner were Spanish. It did not come within any of the declared exemptions from seizure set forth in the proclamation of the President. A claim was filed with the War Department for its use, and rejected (R., 6).

The trial court held the seizure and use of the property for military purposes proper and dismissed the suit. Judgment was entered April 9, 1901 (R., 5–7); thereafter a petition for rehearing was overruled and final judgment entered; appeal allowed and assignment of errors filed May 25, 1901 (R., 9, 10, 11); no other steps were taken until May 24, 1902, when plaintiffs were ordered to give bond on appeal. The record was certified by the clerk of the trial court on June 20, 1902, and filed in this court October 29, 1902 (R., 14). It contains no citation.

The act of March 3, 1887, commonly called the Tucker Act (24 Stats., 505, chap. 359), provides—

That the Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable. * * *

SEC. 2. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars. * * *

SEC. 5. That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified, with the clerk of the respective court having jurisdiction of the case, *and in the district where the plaintiff resides.* Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, etc.

The act of Congress of April 12, 1900 (31 Stats., c. 191, p. 77), entitled "An act temporarily to provide revenue and a civil government for Porto Rico, and for other purposes," provides—

> SEC. 34. That Porto Rico shall constitute a judicial district to be called "The district of Porto Rico." * * * The district court for said district shall be called the district court of the United States for Porto Rico * * * and shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States, and shall proceed therein in the same manner as a circuit court.

ARGUMENT.

The Appeal was not Perfected in Time.

The appeal was allowed by the trial court on the 25th day of May, 1901 (R., 10), during the term of this court which commenced October, 1900. The record was filed here on the 29th of October, 1902. An entire term was begun and finished after the appeal was allowed and before the record was filed.

After the expiration of the term immediately succeeding an appeal, it has no further vitality.

Green v. *Elbert* (137 U. S., 615, 621);
Evans v. *State Bank* (134 U. S., 330).

Where an appeal is allowed in open court, but no bond is then given, a citation is essential. No citation appears in the record.

> *Hewitt* v. *Filbert*, 116 U. S., 142, 144;
> *Sage* v. *Railroad Co.*, 96 U. S., 712, 715;
> *Credit Co.* v. *Ark. Cent. Ry.*, 128 U. S., 258 261.

The Trial Court had no Jurisdiction.

(*a*) *The plaintiff did not reside in the district of Porto Rico. Such residence was necessary under section 5 of the Tucker Act to give the trial court jurisdiction.*

A corporation can have no legal existence outside the boundary of the sovereignty by which it was created. It exists only in contemplation of law, and where that law ceases to operate can have no existence. It must dwell in the place of its creation and can not migrate to another sovereignty. Although it must live and have its being in that State only, it may be recognized in other places, and its residence in one State creates no insuperable objection to its power to contract in another.

> This statement has been often reaffirmed by this court, with some change of phrase, but always retaining the idea that the legal existence, the home, the domicil, the habitat, the residence, the citizenship of the corporation can only be in the State by

which it was created, although it may do business in other States whose laws permit it. (*Shaw* v. *Quincy Mining Company*, 145 U. S., 444, 450.)

(*b*) *Plaintiff's claim is not such as would entitle it to redress in a court of law, equity, or admiralty.*

Rights arising out of the violation of international law are not enforced by actions in court. Parties aggrieved as the result of such violations must seek redress through diplomatic channels. In *Ware* v. *Hylton* (3 Dall., 198), this subject is extensively discussed, and the conclusion reached is that, during a state of war, a plain violation of international law, as a result of which a citizen of a belligerent is injured, does not give him a right of action in the courts. The first section of the Tucker Act manifestly intended to limit actions against the Government to that class of claims cognizable in courts of law, equity, or admiralty, and not to create an entirely new set of rights not recognized in the courts prior to that time.

(*c*) *There was no contract, either express or implied, between the United States and the plaintiff—Any possible action would sound in tort.*

The plaintiff maintains that, under the principle of modern international law, private property belonging to a citizen of a hostile nation can not be taken except for necessary military purposes,

and that if taken in violation of law an implied contract arises to pay for the same.

Plaintiff was a citizen of a *hostile nation; no* express contract was made with him; and it appears manifest that no implied contract could have resulted from taking his property by force and arms. If any wrong cognizable in a court of law was done it was a tort.

In *Gooch* v. *United States* (15 Ct. Cls. R., 281, 287), speaking in reference to a claim based upon an alleged implied contract, the court said:

> The case rests wholly on the position that, an agent of the Treasury Department having taken the cotton of the claimant, and the cotton having been converted by another agent of the Department into money, which is in the Treasury, an implied promise arose on the part of the United States to pay her the proceeds of the cotton.
>
> There is no foundation for any such implication. The cotton was taken in Mississippi, one of the insurrectionary States, while a state of war still existed there. In the State in which it was taken, that state of war continued until April, 1866. Until that date Mississippi was, in law, enemy territory, and all residents thereof were enemies, and private property found there was enemy property and a legitimate subject of capture.

If plaintiff suffered as the result of a tort, he has no right of action under the Tucker Act, and he has failed to show either an express or implied contract upon which he is entitled to sue.

The Vessel was Enemy's Property upon the High Seas and Seizure Justifiable under International Law.

The vessel was rightly treated as property of a subject of the enemy upon the high seas and the seizure was justifiable. It was taken for Government use. The provision of section 4624, Revised Statutes, and articles 46–50, American Naval Code, render action by a prize court in such cases unnecessary for any purpose.

Such an adjudication to vest title in the captors is not required by international law, and the return of the vessel before condemnation ought not to be complained of. If the vessel had been destroyed its owner certainly could not have recovered its value.

The *Manila Prize Cases*, 188 U. S., 254, 271, 273, 278.
United States v. *Ross*, 1 Gall., 624.
Hall's Int. Law, secs. 143, 148, 150.
Halleck, Int. Law, p. 758, sec. 13.
Dana's Wheaton, sec. 388, note.
Wharton, Int. L. Dig., sec. 328.
Jecker et al. v. *Montgomery*, 18 How., 110, 123.
The Siren, 13 Wall., 389, 394.

Seizure and use justifiable on grounds of military necessity.

If the seizure was upon land, it was justifiable upon the ground of military necessity.

The general rule is that private property on land may be taken when it is directly useful for military purposes. It should not be seized for the mere sake

of gain or to increase the wealth of the country. The commanding general properly exercises discretion as to when its use is demanded because of military necessity, and no condemnation is necessary to vest title.

Mrs. Alexander's Cotton, 2 Wall., 404, 419.
Taylor v. *Nashville, etc., R. R. Co.*, 6 Coldw. (Tenn.), 646; 98 Am. Dec., 474, 478.
Oakes v. *United States*, 174 U. S., 778, 786.
Cook v. *Howard*, 13 Johns. (N. Y.), 275, 282.

General Orders, No. 101, quoted by counsel for appellants, seems to have no application to the present case. It was made for the government of the military authorities in *Cuba*. (Rept. of War Dept., 1898, vol. 1, pt. 1, p. 125.)

The military authorities in Porto Rico were acting under General Orders, No. 100, section 37 of which is in this language (Military Laws of U. S., p. 1079):

> 37. The United States acknowledge and protect, in hostile countries occupied by them, religion and morality, strictly private property, the persons of the inhabitants, especially those of women, and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.
>
> *This rule does not interfere with the right of the victorious invader* to tax the people or their property, to levy forced loans, to billet soldiers, or *to appropriate property, especially houses, lands, boats, or ships, and churches, for temporary and military uses.*

Any Possible Claim was Relinquished by the Treaty of Peace.

The treaty of peace between the United States and Spain, ratified in April, 1899, provided, Article VII (30 Stats. L., 1757)—

> The United States and Spain mutually *relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other government*, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war.
>
> The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.

The first part of this section fairly states the rule of international law which would control had no such express stipulation been made.

Halleck's Int. Law, p. 851.

Baker's Int. Law, p. 113.

Ware v. *Hylton*, 3 Dall., 198, 229.

If in the settlement of mutual demands by the treaty of peace Spain relinquished claims of her subjects, they must look to her alone for compensation. "That any government has the right to do this (relinquish claims of citizens), as it has the right to refuse war in protection of a wronged citizen, or to take other action which, at the expense of the individual, is most beneficial to the whole people, is too clear for discussion."

Gray, Admnr., v. *U. S.*, 21 Ct. Clms., 340, 392.

United States v. *Mining Co.*, 29 Ct. Clms., 432, 512.

In *Ware* v. *Hylton*, 3 Dallas, 198–229, Mr. Justice Chase, speaking for the court, said:

> I apprehend that the treaty of peace abolishes the subject of war, and that after peace is concluded neither the matter in dispute nor the conduct of either party during the war can ever be revived or brought into contest again. All violences, injuries, or damages sustained by the Government or people of either during the war are buried in oblivion; and all those things are implied by the very treaty of peace, and therefore not necessary to be expressed. Hence it follows that the restitution of, or compensation for, British property confiscated or extinguished during the war by any of the United States could only be provided for by the treaty of peace; and if there had been no provision respecting these subjects in the treaty *they could not be agitated after the treaty by the British Government, much less by her subjects, in courts of justice. If a nation, during a war, conducts herself contrary to the law of nations and no notice is taken of such conduct in the treaty of peace, it is thereby so far considered lawful, as never afterwards to be revived or to be a subject of complaint.*

Protocol only suspended hostilities.

By the protocol there was a mere suspension of hostilities (Art. VI). It was only a step in the effort to arrive at an agreement for peace. In effect, it was a truce. The object being temporary, everything in the end should be in the same position as at the beginning. The meaning of every such compact is that all things should remain as they were at the moment of its consummation.

1 Kent Comm., 159, 161.
Vattel, b. 3, ch. 16, secs. 233–238.
Taylor's Int. Law, sec. 513.

This vessel was taken before the truce was declared. Its retention during the existence of the truce was entirely proper. The Government by thus retaining it incurred no new obligation, and as no liability existed prior thereto plaintiff's claim is without merit.

The Government respectfully asks that the appeal be dismissed, or that the judgment of the lower court be affirmed.

J. C. McREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *April, 1904.*

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